

MINUTES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA v. JOHNNY LEE NAPIER
THE HONORABLE JOHN W. SEDWICK CASE NO. 4:04-cr-00033-JWS
Deputy Clerk Official Recorder
Linda Christensen

APPEARANCES: for PLAINTIFF: ----

for DEFENDANT: ----

PROCEEDINGS: **ORDER FROM CHAMBERS**

At docket 65 defendant moves for clarification of what will be addressed at the re-sentencing proceeding scheduled for January 4, 2007. The motion at docket 65 is **GRANTED** as follows:

When the court scheduled the January 4, 2007 proceeding, it assumed that an evidentiary hearing would be required to resolve the restitution issue. As originally envisioned by the court, the January 4, 2007 proceeding would have addressed both issues remanded for further consideration by the Court of Appeals, the mental health condition and the size of the restitution obligation.

After the court set the hearing, defendant moved at docket 61 for an order deciding the restitution issue. In his motion, defendant asked the court to decide the issue on the existing record without an evidentiary hearing. "The district court may have assumed the necessity of a court hearing on this [restitution] issue. However, a hearing is not needed, and the appellate remand does not require it." (Doc. 61 at p. 1) The government acquiesced in that approach. (Doc. 62 at pp. 3-4) After reviewing the motion papers, the court reviewed the entire record and concluded that defendant was correct; the restitution issue was amenable to decision on the basis of the existing record. In a separate order, the court has denied the motion at docket 61 and held that the existing restitution obligation remains in place.

Having determined that defendant's invitation to decide the restitution issue on the existing record was correct, there is no longer a need for an evidentiary hearing on January 4, 2007, respecting restitution. The only matter to address further on January 4, 2007, will be the mental health condition.

DATE: December 18, 2006 ENTERED AT JUDGE'S DIRECTION
INITIALS: lc
Deputy Clerk